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IN THE

Supreme Court of the United States

October Term, 1965

No. 739

GIBRALTER AMUSEMENTS, LTD.,
Petitioner and Bankrupt-Appellant,

v.

THE WURLITZER COMPANY, WURLITZER ACCEPTANCE CORPORATION, WILLIAM F. WADSWORTH and THE NATIONAL BANK OF WESTCHESTER, Petitioning Creditors, Intervening Creditor, and M. HALLSTED CHRIST, Trustee,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MECHTA & MECHTA,
Counsel for Petitioner,
No. 112-66 Astoria Boulevard,
Corona, New York 11369.

LOOSE APPEAL PRESS, INC., 41 VESEY STREET, NEW YORK, N. Y. WOrth-2-0689

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THE WURLITZER COMPANY, WURLITZER ACCEPTANCE CORPORATION, WILLIAM F. WADSWORTH and THE NATIONAL BANK OF WESTCHESTER, Petitioning Creditors, Intervening Creditor, and M. HALLSTED CHRIST, Trustee,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, made in the above-entitled proceeding on July 26, 1965, and in which a petition for re-hearing *en banc* was denied by the said court on August 17, 1965.

Citations to Opinions Below

The decision of the Court of Appeals, dated July 26, 1965, is not reported; however, it is printed as Appendix C; the application for review *en banc* and the denial

thereof, and the decision of the United States District Court for the Eastern District and of the Referee, are printed herein as Appendices A through F, inclusive.

Jurisdiction

The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1254 (1).

Question Presented

Whether the bankrupt is a party aggrieved and may, pursuant to General Order 21 (6), petition for reconsideration of any claims presented in its involuntary bankruptcy.

Statute Involved

Subdivision 6 of Section 21, "Proofs of Claim," General Orders in Bankruptcy, reads as follows:

> "When the Trustee or any creditor or the bankrupt or debtor shall desire the reconsideration of any claim allowed against the estate, he may apply by petition to the referee to whom the case is referred for an order for such reconsideration, and thereupon the referee shall make an order fixing a time for hearing the petition, of which due notice shall be given by mail addressed to the creditor. At the time appointed the referee shall take the examination of the creditor, and of any witness that may be called by either party, and if it shall appear from such examination that the claim ought to be expunged or diminished, the referee may order accordingly."

Statement of the Case

The petitioner, Gibraltor Amusements, Ltd., is the non-discharged bankrupt.

On March 18, 1960, an involuntary petition in bankruptcy was filed by the respondent, The Wurlitzer Company, as a sole creditor, alleging the existence of less than twelve creditors of the bankrupt. Thereafter an amended involuntary petition was filed by The Wurlitzer Company (Wurlitzer) on May 5, 1960, again alleging less than twelve creditors; however, one, William F. Wadsworth, Wurlitzer Acceptance Corporation (WAC) and a Joseph Rao, were granted leave to intervene at about this time, as petitioning creditors. Subsequent to the adjudication in bankruptcy on August 6, 1960, the petition of Joseph Rao was disallowed because his claim was contingent. Still subsequent thereto, the National Bank of Westchester sought and obtained leave to intervene as a creditor. After the adjudication in bankruptcy on August 19, 1960, the estate was administered by the former Receiver as Trustee, who still so administers it. On December 13, 1963, by virtue of an order to show cause returnable December 17, 1963, a newly-elected officer of the within bankrupt appeared in the proceedings claiming lack of jurisdiction over the bankrupt in the United States District Court for the Eastern District of New York because of the absence of valid service, non-appearance and commission of fraud by the petitioning creditors; as either one, alone, would have been sufficient to deprive the court of jurisdiction, the presence of both, the jurisdictional defect and the fraud, must certainly have resulted in deprivation of jurisdiction over this bankrupt by the United States District Court for the Eastern District of New York. The prayer for relief in the show cause order requested vacatur of the adjudication in bankruptcy.